

TESTIMONY OF JAROCKI, pp. 267-270

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1 A Yes, the electrical current, or the specs that the
2 machines are built to, are similar to the specs of the
3 United States. They are interchangeable. You can plug them
4 right in.

5 Q Mr. Jarocki, were you involved in the negotiations
6 towards the agreement with Namco concerning the purchase of
7 the rights in the Galaxian by Midway?

8 A Yes.

9 Q Can you tell me exactly what the situation was and
10 is, to your knowledge now, in Japan concerning Namco's
11 rights or the rights to the Galaxian in the Japanese market?

12 A Repeat the question so it is simpler for me to
13 understand.

14 Q Has Namco licensed manufacturers in the Japanese
15 market?

16 A Yes, they have.

17 Q Do you have any idea as to how many have been
18 licensed?

19 A As I recall, it was either five or six. }

20 Q Were you made aware during your negotiations what
21 their rights were under the license?

22 A Afterwards. Not when we were there. It was done
23 afterward. We were the first licensees of the product.

24 Q Afterwards when you were made aware, can you tell me
25 what the rights of these licensees in Japan are?

1 A They had non-exclusive selling rights in Japan
2 only, in the Japanese market place, as I recall.

3 Q Are you aware of what Namco has been doing as
4 regards to policing illegal copies or illegal use of the
5 name or machine rights?

6 A Yes.

7 Q What are those efforts?

8 A They police through -- just like we do -- give
9 monthly reports as to how many units are manufactured and
10 sold. That is how they pay their license fees. In addition
11 to that, they have their own means of controlling -- to make
12 sure that the product that is manufactured by those licensees
13 stays within the Japanese market place.

14 This is one of the things that we had asked for
15 in our negotiations -- if you do license control, you are
16 licensees.

17 Q In their policing program in regards to people who
18 are making illegal copies, are they prosecuting those people?

19 A I can't say whether they are prosecuting the people
20 who are making illegal copies. However, they have taken
21 legal action, it is my understanding, against one of their
22 licensees. They have taken action in the Japanese courts
23 against one of their licensees.

24 JUDGE SAXON: What were the charges?

25 THE WITNESS: As I recall, Your Honor, they were

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1 shipping out of the agreed territory, overproduction,
2 meaning perhaps that they were reporting fewer -- I am
3 assuming, okay? -- I am assuming, when they say over-
4 production, they were reporting fewer units than they were
5 actually manufacturing. In other words, paying a lesser
6 license fee.

7 The third thing was that they had made some minor
8 changes to the game and without the expressed approval of
9 Namco. In my earlier testimony, I believe your question to
10 me was, did we make any changes to the game, and I indicated,
11 no, any changes would have to be made with the expressed
12 consent of the licensor.

13 One of the companies that they had licensed had
14 made changes. They changed the name of the game, also.
15 And this is why they had taken this legal action, I
16 understand.

17 JUDGE SAXON: Because the name of the game had
18 been changed?

19 THE WITNESS: And they made one or two minor
20 changes in the presentation, and if I can -- do you want me
21 to name the company?

22 JUDGE SAXON: No. Well, go ahead and name the
23 company.

24 THE WITNESS: Okay. It happens to be Nichibutsu.
25 And they changed the name to Moon Alien, and they put the

cs 9 1 fuel bar in there.

2 JUDGE SAXON: They put the what in there?

3 THE WITNESS: The fuel bar -- we talked about,
4 the Nichibutsu Moon Aliën game, they had a fuel bar, and
5 that was the other change they made to the game. And this
6 disturb, I assume, disturbed the Namco people. This is a
7 separate thing. It has nothing to do with this, but there is
8 legal action pending concerning that situation in the
9 Japanese courts.

10 JUDGE SAXON: Part of that case was an allegation
11 that Nichibutsu -- I am sorry. Say that again.

12 THE WITNESS: Nichibutsu.

13 JUDGE SAXON: Nichibutsu.

14 THE WITNESS: With an "N". Nichibutsu.

15 JUDGE SAXON: Okay. -- had exported a game; that was
16 a separate allegation?

17 THE WITNESS: That was breach of contract as far as
18 territory was concerned, Your Honor. That is what happened.
19 In other words, they had a non-exclusive to manufacture and
20 sell in the Japanese market place.

21 JUDGE SAXON: All right. The suit was not to collect
22 royalties on the games they exported. It was to stop the
23 exportation?

24 THE WITNESS: Breach of an agreement, yes.

25 Territorial agreement. It was like four parts to the suit,

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1 THE WITNESS: And I'll come back and go back to
2 the two people who had gathered the information for me, okay?
3 Mr. Nakajima, I must assume in his 50,000 games that he
4 talked about, they were of the Namco-Galaxian type; that's
5 all; okay?

6 In other words, that. Now the total package of
7 the 100,000 that Mr. Konno talks about, because I didn't
8 ask specifically just that, I said "Galaxian-type", it would
9 bunch everything else, all the others.

10 So you have 50,000 that would be of that type of
11 the game that we see here as the Midway Galaxian. In other
12 words, maybe the Namco Galaxian. He's talking about Namco
13 Galaxians; I'm sure of that.

14 I would have to get more specific information
15 from him, but I believe that's what he is talking about.

16 BY MR. BRYANT:

17 Q So you are testifying that they are the same
18 licensor that gave you a license to sell in the United
19 States is also attempting to ship to the United States in
20 violation of your direct contract.

21 A No.

22 Q You said "Namco Galaxians"?

23 A You have to understand that their marketing con-
24 cept is in some general way similar to ours. Manufacturer,
25 distributor, operator. Once a manufacturer builds the

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1 product and sells that product to the distributor, whether
2 it be in Japan or like ourselves, he loses control of that
3 product.

4 And if we can take it into the three-step opera-
5 tion, I'll build them and I sell them to Judge Saxon and she
6 is a distributor, and she sells it to you, Mr. Bryant. And
7 when she sells you that piece of equipment and you place it
8 on location, you own it.

9 I have lost total control over that piece of
10 equipment. I built it; I sold it; I made my profit. It's
11 just like Midway. I build it; I sell it; I make my profit
12 and I lose control.

13 I couldn't tell you where a Midway game is placed
14 unless I bumped into it on location. And the same thing
15 happens there. So when you, as the operator, you decide
16 that that piece of equipment isn't making money, it's not
17 profitable for you any longer, and a new piece of equipment
18 comes out, you do a couple things.

19 You have a choice of doing a couple things. One,
20 you can take it off your route and put it in your warehouse,
21 hopefully, to sell it to some exporter or in some market.

22 Secondly, you can take it back to Judge Saxon and
23 you can say, "Judge, this piece of equipment doesn't earn
24 any money; I would like to trade it in on new equipment."
25 And she will give you an allowance for it.

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1 And then it's her job to find out what she's going
2 to do with that used equipment that's taken in in trade.
3 This is the natural, three-step operation in our business.
4 It works like a used car business.

5 The guy that builds a car and sells it to a dealer
6 or a distributor, the dealer sells it to the consumer and
7 then he takes in the trades. Now, those Namco Galaxians
8 could possibly find their way back into the marketplace with
9 no control of the licensee, because he's lost control when
10 he built it and he sold it.

11 It then becomes you, as the operator, it's your
12 equipment. And what you decide to do with it, to whom you
13 decide to sell it to, that's a factor. And -- Mr. Plaia
14 now becomes an exporter.

15 And he puts out a letter to the trade in Japan
16 and says, "Hey, I'm looking for some Galaxians, and I'll
17 give you X amount of dollars, whatever they are", okay?
18 You've got them in your warehouse.

19 Judge, you've got them in your warehouse. } You
20 sell them to Mr. Plaia, and Mr. Glick is the guy in the
21 United States who is going to buy them.

22 JUDGE SAXON: Mr. Jarocki --

23 THE WITNESS: Yes, ma'am.

24 JUDGE SAXON: -- are you telling us that the
25 ultimate purchaser who has this machine he doesn't want to

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1 keep anymore, he has a right to sell this anywhere in the
2 world?

3 THE WITNESS: Of course; yes, ma'am. Yes, ma'am.

4 JUDGE SAXON: I have a problem seeing why your
5 company is saying that it's unfair for them to import them
6 to this country.

7 THE WITNESS: I don't understand why you feel
8 that way.

9 JUDGE SAXON: Or I'm asking the wrong person. I
10 guess I'll refer that to Mr. Plaia. My question is, If
11 Namco loses control over what's done with these machines
12 and some licensors do retain that control after the machine
13 is used up.

14 Apparently, Namco does not retain control over
15 the machine after it is no longer used. And the ultimate
16 purchaser can export it to the United States without --

17 MR. PLAIA: Well, he can if it doesn't violate our
18 rights.

19 JUDGE SAXON: All right, but you get your rights
20 from Namco. My problem is, Namco isn't keeping control
21 over --

22 MR. PLAIA: He doesn't have any rights in the
23 United States from Namco. We have the rights --

24 JUDGE SAXON: I know, but Namco has no more con-
25 trol over these games in Japan.

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